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10 **JENNIFER BORISSOFF and VALENTIN BORISSOFF**

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT**  
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16 **JENNIFER BORISSOFF and VALENTIN**  
17 **BORISSOFF,**

18 **Plaintiffs,**

19 **vs.**

20 **GLAXOSMITHKLINE,**  
21 **GLAXOSMITHKLINE CONSUMER**  
22 **HEALTHCARE, GLAXOSMITHKLINE**  
23 **CONSUMER HEALTHCARE L.L.C.,**  
24 **GLAXOSMITHKLINE CONSUMER**  
25 **HEALTHCARE, L.P.,**

26 **Defendants.**

27 **Case No: CV-08-3491-WHA**

28 **FIRST AMENDED COMPLAINT FOR**  
**PERSONAL INJURIES AND LOSS OF**  
**CONSORTIUM; DEMAND FOR JURY**  
**TRIAL**

Plaintiffs JENNIFER BORISSOFF and VALENTIN BORISSOFF hereby claim and for causes  
of action against Defendants, aver as follows:

**GENERAL ALLEGATIONS**

1. Plaintiffs JENNIFER BORISSOFF and VALENTIN BORISSOFF are individuals who were  
residents in this Federal Judicial District for a significant period of time during which plaintiff  
JENNIFER BORISSOFF purchased and used defendants' denture adhesive products, primarily  
Super Poligrip.

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**JURISDICTION**

2. Jurisdiction is based on 28 U.S.C. section 1332 given that plaintiffs on the one hand presently reside in Las Vegas, Nevada and defendants GLAXOSMITHKLINE, GLAXOSMITHKLINE CONSUMER HEALTHCARE, GLAXOSMITHKLINE CONSUMER HEALTHCARE L.L.C., GLAXOSMITHKLINE CONSUMER HEALTHCARE, L.P., (collectively "GSK") whose principal place of business is in the State of Pennsylvania, are citizens of diverse states, and the amount in controversy exceeds \$75,000.00.

**VENUE**

3. Venue is proper under 28 U.S.C. 1391 (b)(2) in that a substantial part of the events or omissions on which the claim is based occurred within this judicial district.

**DEFENDANTS**

4. At all times relevant, Defendants GSK were Delaware corporations with their principal place of business in the United States in the State of Pennsylvania. Defendants GSK developed, designed, formulated, manufactured, tested, packaged, labeled, advertised, marketed, distributed and have sold Poligrip and Super Poligrip denture adhesive products.

5. Plaintiff JENNIFER BORISSOFF is 34 years old. Plaintiff JENNIFER BORISSOFF used Super Poligrip commencing in 1999, after damage to her teeth caused by braces left her denture dependent. Plaintiff JENNIFER BORISSOFF ceased the use of Super Poligrip in or about early 2007, after she was diagnosed with neuropathy attributed to excess zinc and resulting copper depletion attributable to Super Poligrip. For the majority of the time JENNIFER BORISSOFF purchased and used Super Poligrip, she resided in San Jose, California. Although zinc and copper levels have returned to normal after ceasing the use of Super Poligrip, she now suffers from profound and permanent neurological and other injuries attributable to her Super Poligrip use, which injuries have left plaintiff JENNIFER BORISSOFF unable to perform her normal, customary and daily activities, and in need of constant care and assistance. Plaintiffs allege that these injuries and disabilities are a result of an actionable defect in the Super Poligrip products used by plaintiff JENNIFER BORISSOFF, and negligence on the part of GSK.

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**FIRST CAUSE OF ACTION****(Strict Products Liability for JENNIFER BORISSOFF)**

6. Plaintiffs reallege and incorporate by this reference as though set forth in full, each and every, all and singular, the allegations contained in paragraphs 1 through 5 above.

7. Super Poligrip products contain a form of zinc which is bonded to a chemical of unknown formulation. Plaintiffs aver that when Super Poligrip is foreseeably swallowed and otherwise exposed to the user's gastrointestinal tract, zinc in excess amounts is absorbed in the body's tissues, upsetting mineral homeostasis and resulting in depleted copper levels in the body. This copper depletion results in the development of, *inter alia*, a constellation of neurological symptoms generally referred to as neuropathy and other complications. By the time these symptoms are noticed and eventually connected to excess zinc and copper depletion, permanent neurological and other physical injury has already been suffered by the user. While cessation of Super Poligrip generally results in a return to normal zinc and copper levels, symptoms generally do not improve. The former user is thus left with permanent, profound personal injuries, and enduring disabilities.

8. Defendants GSK developed, designed, formulated, manufactured, packaged, labeled, advertised, marketed, instructed on and warned about, distributed and sold Poligrip and Super Poligrip denture adhesive products since at least 2001.

9. Poligrip and Super Poligrip products are FDA class I medical products.

10. Defendants GSK are strictly liable to Plaintiff JENNIFER BORISSOFF because Super Poligrip was defective and unreasonably dangerous for use due to its defective design, manufacture, production, development, formulation, packaging, advertising, marketing, distribution and sale, and due to defendants GSK's failure to provide adequate instructions regarding use and warnings of the substantial dangers known or knowable at the time of Poligrip and Super Poligrip's labeling, marketing, advertising, distribution and sale, up to the time of plaintiff JENNIFER BORISSOFF' injuries.

11. Defendants GSK through their wrongful acts and omissions placed on the market and in the stream of commerce a defective product, Poligrip and/or Super Poligrip, unreasonably

1 dangerous to the consumer, knowing that the product would reach and did reach the ultimate  
2 consumer without substantial change in the defective condition it was in from the date when it  
3 left Defendants' control.

4 12. Defendants GSK knew or should have known that the ultimate users or consumers  
5 of this product would not, and could not, inspect Poligrip and/or Super Poligrip or otherwise  
6 investigate so as to discover the latent defects described above. The product was defective when  
7 it left the control of Defendants GSK.

8 13. Defendants GSK knew or should have known of the substantial dangers involved  
9 in the reasonably foreseeable use of Poligrip and/or Super Poligrip, whose defective design,  
10 manufacture, formulation, and lack of instructions and warnings caused it to have an  
11 unreasonably dangerous propensity to cause injury in users as a result of the upset to normal  
12 physiologic mineral homeostatis set in motion by excess zinc absorption from metabolized zinc.

13 14. Plaintiff JENNIFER BORISSOFF used Super Poligrip as intended in a manner  
14 reasonably foreseeable to defendants GSK, and in a manner that was reasonably foreseeable by  
15 Defendants as involving a substantial danger not readily apparent if adequate instructions  
16 regarding use and warnings of the danger were not given.

17 15. Plaintiff JENNIFER BORISSOFF was a foreseeable user of Poligrip and Super Poligrip.

18 16. Plaintiff JENNIFER BORISSOFF has and will continue to suffer losses, including  
19 medical and loss of income, and harms, including physical and emotional injury, which harms  
20 and losses are in excess of \$75,000.00. These harms and losses were the legal and proximate  
21 result of Poligrip and/or Super Poligrip's defect including but not limited to defendants GSK's  
22 failure to provide adequate instructions for use and warnings of the risks of substantial harm  
23 associated with the foreseeable use of said product.

## 24 **SECOND CAUSE OF ACTION**

### 25 **(Negligence for JENNIFER BORISSOFF)**

26 17. Plaintiff JENNIFER BORISSOFF incorporates by reference all preceding paragraphs  
27 and allegations as if fully set forth herein.

28 18. Defendants, and each of them, owed a duty to plaintiff JENNIFER BORISSOFF to

1 use reasonable care in the development, design, manufacture, packaging, labeling, testing,  
2 marketing, advertisement, inspection, distribution, provision of warnings and instructions, and  
3 sale of Poligrip and/or Super Poligrip to be used by the public and ultimate users, like Plaintiff  
4 JENNIFER BORISSOFF, for the purpose for which such products were intended.

5 19. Defendants breached said duty and are guilty of one or more of the following  
6 negligent acts and/or omissions:

7 a. Failing to use due care in the development, design, formulation, manufacturing,  
8 labeling, testing, assembly, marketing, advertising, inspection, sale and/or distribution of Poligrip  
9 and/or Super Poligrip and/or to utilize and/or implement reasonably safe designs for it;

10 b. Failing to provide adequate and proper warnings to the public and to Plaintiffs of  
11 Poligrip and Super Poligrip's dangerous propensities when used in a reasonably foreseeable  
12 manner;

13 c. Failing to design, formulate, manufacture and incorporate or to reformulate Poligrip  
14 and Super Poligrip with reasonable safeguards and protections against the type of injury and  
15 damage suffered by plaintiff JENNIFER BORISSOFF when used in a reasonably foreseeable  
16 manner;

17 d. Failing to adequately prevent, identify, mitigate, and fix defective designs and hazards  
18 associated with Poligrip and Super Poligrip in accordance with good design practices;

19 e. Failing to notify and warn the public including Plaintiff JENNIFER BORISSOFF of  
20 reported incidents involving injury, etc., and the negative health effects of excess zinc, thus  
21 misrepresenting the safety of the product;

22 f. Failing to make timely and adequate corrections to the manufacture, design and  
23 formulation of Poligrip and Super Poligrip so as to prevent and/or minimize the problems suffered  
24 by Poligrip and Super Poligrip use;

25 g. Failing to use due care in the testing, formulation, inspection, distribution, sale and  
26 instructions regarding the product at all times prior to plaintiffs' injuries having manifested  
27 themselves; and

28 h. Otherwise being careless and negligent.





1 Plaintiff VALENTIN BORISSOFF is informed and believes and therefore alleges, that because of the  
2 permanent injuries sustained by Plaintiff JENNIFER BORISSOFF as herein alleged, he will in the  
3 future continue to lose all or a portion of the aforesaid items, all to his damage in an amount in  
4 excess of the jurisdictional limits of this Court, which will be shown according to proof at time of  
5 trial.

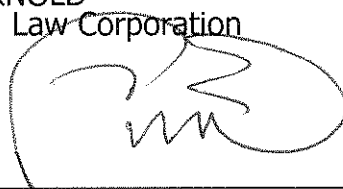
6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiffs pray judgment against Defendants GSK as follows:

- 8 1. Special damages for JENNIFER BORISSOFF;
- 9 2. General damages for JENNIFER BORISSOFF;
- 10 3. Loss of consortium damages for VALENTIN BORISSOFF;
- 11 4. Costs of suit;
- 12 5. Prejudgment interest; and
- 13 6. For such other and further relief as the court deems just and proper.

14 Dated: August 5, 2008

CLAYEO C. ARNOLD  
A Professional Law Corporation

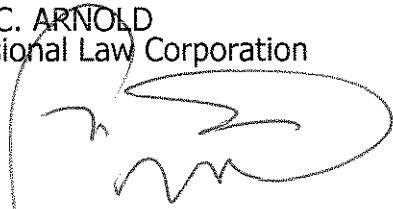
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17 By:   
18 KIRK J. WOLDEN  
Attorney for the Plaintiffs

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20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs, JENNIFER BORISSOFF and VALENTIN BORISSOFF, hereby demand trial by a jury  
22 of their peers.

23 Dated: August 5, 2008

CLAYEO C. ARNOLD  
A Professional Law Corporation

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25  
26 By:   
27 KIRK J. WOLDEN  
28 Attorney for the Plaintiffs